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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,540	03/15/2001	Stewart Brodie	01109	5468

24118 7590 06/29/2005  
HEAD, JOHNSON & KACHIGIAN  
228 W 17TH PLACE  
TULSA, OK 74119

EXAMINER

BLAIR, DOUGLAS B

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/809,540

Applicant(s)

BRODIE ET AL.

Examiner

Douglas B. Blair

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,185,623 to Bailey et al..

3. As to claim 1, Bailey teaches a data transfer network comprising: a trivial transfer protocol server connected to transfer data to a series of client apparatus connected to the network and when data is to be transferred, one of the clients is designated the master client and the speed of requests for data from said master client determines the rate of transfer of data to all of the clients (col. 6, lines 25-41) wherein the rate of transfer of data to each client when elected the master client is monitored and compared with a predetermined transfer rate and if, from the comparison, it is identified that the transfer rate is longer than the predetermined transfer rate, the trivial file transfer protocol server elects another client which is available as master client (col. 7, lines 57-65).

4. As to claim 4, Bailey teaches a data transfer network according to claim 1 wherein the master client is monitored for a set period of time to allow comparison with the pre-determined transfer rate (col. 7, lines 57-65).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,185,623 to Bailey et al. in view of U.S. Patent Number 5,727,002 to Miller et al..

7. As to claims 2, Bailey teaches the method of claim 1; however Bailey does not explicitly teach a server selected a client as the master client that has shown the fastest rate.

Miller teaches a TFTP server electing a client as master client which has shown the fastest rate of transfer (col. 11, lines 23-36).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teaching of Bailey regarding the selecting and monitoring of a master client with the teachings of Miller regarding selecting a master based on the fastest transfer rate because slower clients would slow down faster clients (Miller col. 11, lines 23-36).

8. As to claim 3, Bailey teaches the method of claim 1; however Bailey does not explicitly teach the predetermined transfer rate being the optimal time for transfer of a certain amount of data.

Miller teaches the predetermined transfer rate being the optimal time for transfer of a certain amount of data (col. 11, lines 23-62).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teaching of Bailey regarding the selecting and monitoring of a master client with the teachings of Miller regarding selecting an optimal transfer rate because faster clients would not want to be slowed down by clients subject to congestion (Miller, col. 11, lines 23-62).

9. As to claim 5, Bailey teaches the method of claim 1; however Bailey does not explicitly teach a database for storing transfer rates.

Miller teaches the transfer rate for each of the clients is recorded over a period of time and stored in a database of transfer rates, the server using the database so that on occasion said server elects a master client which shows the fastest rate of transfer in the database (col. 11, lines 23-62).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teaching of Bailey regarding the selecting and monitoring of a master client with the teachings of Miller regarding selecting the client with the fastest rate because faster clients would not want to be slowed down by clients subject to congestion (Miller, col. 11, lines 23-62).

10. As to claim 6, Miller teaches a network wherein if a first client is not available another client is selected from the database in ascending order of client transfer rates (col. 11, lines 23-62).

11. As to claim 7, Miller teaches a network in which the database is updated on each occasion when a client is selected as master (col. 11, lines 23-62).

***Response to Arguments***

12. Applicant's arguments filed 3/28/2005 have been fully considered but they are not persuasive. The applicant argues that since the Bailey reference teaches a system must reach a state of network failure before it resets the master client, that it does not teach changing a master client based on monitoring and comparing the rate of data transfer to a predetermined transfer rate. However Bailey teaches that if a timeout occurs, then the master client is switched; a timeout is considered to be monitoring for a predetermined rate of data transfer.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas B. Blair whose telephone number is 571-272-3893. The examiner can normally be reached on 8:30am-5pm Mon-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Douglas Blair

A handwritten signature in black ink, appearing to read "Andrew Caldwell", with a stylized circular flourish at the end.

**ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER**